

ORDINANCE NO. 91-16

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, IMPLEMENTING THE LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT BY PROVIDING PROCEDURES AND REQUIREMENTS FOR THE CONSIDERATION AND APPROVAL OF DEVELOPMENT AGREEMENTS BETWEEN PALM BEACH COUNTY AND ANY PERSON HAVING A LEGAL OR EQUITABLE INTEREST IN REAL PROPERTY WITHIN THE UNINCORPORATED PORTION OF PALM BEACH COUNTY OR COUNTYWIDE REGARDING ORDINANCES OF COUNTYWIDE EFFECT; PROVIDING FOR SHORT TITLE AND AUTHORITY; PROVIDING FOR STATEMENT OF INTENT AND PURPOSE; PROVIDING DEFINITIONS; PROVIDING RULES OF CONSTRUCTION; PROVIDING PROCEDURE FOR REVIEW OF DEVELOPMENT AGREEMENT; PROVIDING STANDARDS OF A DEVELOPMENT AGREEMENT; PROVIDING EXECUTION OF A DEVELOPMENT AGREEMENT; PROVIDING FOR RECORDATION; PROVIDING THAT APPROVAL OF A DEVELOPMENT AGREEMENT IS A LEGISLATIVE ACT; PROVIDING EFFECT OF EXISTING LAWS ON LANDS SUBJECT TO DEVELOPMENT AGREEMENT; PROVIDING EFFECT OF CONTRARY STATE AND FEDERAL LAWS ON A DEVELOPMENT AGREEMENT; PROVIDING FOR AMENDMENT OR CANCELLATION OF AGREEMENT BY MUTUAL CONSENT; PROVIDING FOR ENFORCEMENT, SEVERABILITY, REPEAL OF LAWS IN CONFLICT, INCLUSION IN THE COUNTY CODE AND AN EFFECTIVE DATE.

WHEREAS, Secs. 163.3220-163.3243, Fla. Stat., sets forth the Florida Local Government Development Agreement Act (the "Act"); and

WHEREAS, the Act recognizes that the lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and

discourage commitment to comprehensive planning; and

WHEREAS, the Act mitigates this lack of certainty in the approval of development and strengthens the public planning process and sound capital improvement planning through the authorization of local governments to enter into Development Agreements with developers through local ordinances pursuant to the terms of the Act, in order to assure and coordinate adequate public facilities to serve development, and provide more certainty in the development review process; and

WHEREAS, the Act provides that the Act shall be regarded as supplemental and additional to the powers conferred upon local governments by other laws and shall not be regarded as in derogation of any powers now existing; and

WHEREAS, the Board of County Commissioners of Palm Beach County finds that this Ordinance is intended and necessary to preserve and enhance the present advantages that exist in Palm Beach County, encourage the most appropriate use of land, water, and other resources, consistent with the public interest, overcome present handicaps, and deal effectively with future problems that may result from the use and development of land within Palm Beach County; and

WHEREAS, the Board of County Commissioners of Palm Beach County finds that this Ordinance is necessary to assure and coordinate adequate public facilities and safe development and to provide certainty in the development review and approval process.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY:

SECTION I.

SHORT TITLE, AUTHORITY, AND APPLICATION

A. Short Title. This Ordinance shall be known as the "Palm Beach County Development Agreement Ordinance."

B. Authority. The Board of County Commissioners of Palm Beach County has the authority to adopt this Ordinance pursuant to Art. VIII, Sec. 1, Fla. Const., the Palm Beach County Charter, Sec. 125.01, et. seq., Fla. Stat., Sec. 163.3161, et. seq., Fla. Stat., and Sec. 163.3220, et. seq., Fla. Stat..

1 C. Application. This Ordinance shall apply to development
2 in the unincorporated area of Palm Beach County, except that
3 Development Agreements may be entered into between Palm Beach
4 County and a developer regarding property within a municipality to
5 comply with the terms of any ordinance of Countywide effect as
6 authorized by Section 1.3 of the Palm Beach County Charter as
7 amended from time to time. A municipality may, but is not required
8 to be a party to a development agreement between Palm Beach County
9 and a developer within a municipality. This Ordinance is
10 supplemental to and additional to the powers conferred upon Palm
11 Beach County by laws and ordinances other than the Florida Local
12 Government Development Agreement Act and shall not be regarded as
13 being in derogation of any powers now existing.

14 SECTION II.
15 INTENT AND PURPOSE

16 A. Implementation of Comprehensive Plan. This Ordinance is
17 intended to implement and be consistent with the Palm Beach County
18 Comprehensive Plan.

19 B. Development Agreement to Ensure Compliance with
20 Comprehensive Plan. The objective of this Ordinance is
21 accomplished by authorizing Development Agreements to be entered
22 into between a developer and Palm Beach County pursuant to the
23 terms of this Ordinance to ensure the adequacy of public facilities
24 and sound capital improvement planning, and appropriate
25 environmental protection, while providing certainty in the process
26 of obtaining development approval and reducing the economic costs
27 of development by providing greater regulatory certainty.

28 C. Minimum Requirements. The provisions of this Ordinance
29 in their interpretation and application are declared to be the
30 minimum requirements necessary to accomplish the stated intent,
31 purposes, and objectives of this Ordinance.

32 SECTION III.
33 DEFINITIONS

34 The definitions below are included for purposes of this
35 ordinance only and do not supersede or modify definitions contained
36 in other portions of the Code of Laws and Ordinances of Palm Beach

County, Florida.

A. Aggrieved or Adversely Affected Person means any person or local government which will suffer an adverse effect to an interest protected or furthered by the Palm Beach County Comprehensive Plan, the Palm Beach County Charter, and the Palm Beach County Land Development Regulations, including interests related to health and safety, police and fire protection systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, or environmental or natural resources. The alleged adverse effect may be shared in common with other members of the community at large, but shall exceed in degree the general interest in common good shared by all persons.

B. Comprehensive Plan means the Palm Beach County Comprehensive Plan, as amended, when referenced in this Ordinance.

C. Developer means any person, including a governmental agency undertaking any development.

D. Development has the meaning given it in Sec. 163.3221(3), Fla. Stat. (1989), as amended from time to time..

E. Development Agreement means an Agreement entered into between Palm Beach County and a person associated with the development of land pursuant to the terms of this Ordinance.

F. Development Order means any order granting or granting with conditions an Application for Development Permit.

G. Development Permit includes any rezoning, special exception, planned unit development, special permit, site plan, subdivision plat, building permit, certificate of concurrency reservation, variance, or any other official action of Palm Beach County having the effect of permitting the development of land.

H. Land means the earth, water, and air, above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

J. Land Development Regulations means ordinances enacted by Palm Beach County for the regulation of any aspect of development and includes any zoning, rezoning, subdivision, environmental,

1 building construction, or sign regulation or traffic performance
2 standard controlling the development of land.

3 **K. Local Planning Agency** means the local planning agency
4 designated by the Board of County Commissioners of Palm Beach
5 County to prepare the Comprehensive Plan for the Unincorporated
6 Area of Palm Beach County pursuant to Section 163.3174, Florida
7 Statutes, as amended from time to time.

8 **L. Person** means any individual, corporation, governmental
9 agency, business trust, estate, trust, partnership, association,
10 two or more persons having a joint or common interest, governmental
11 agency, or any other legal entity.

12 **M. Planning Director** means the Director of the Planning
13 Division of the Palm Beach County Planning, Building and Zoning
14 Department.

15 **N. Planning Commission** means the Palm Beach County Planning
16 Commission as set forth in the Palm Beach County Zoning Code.

17 **O. Public Facilities** means capital facilities including but
18 not limited to drainage facilities, park and recreation facilities,
19 potable water facilities, road facilities, sanitary sewer
20 facilities, solid waste facilities, mass transit facilities,
21 fire-rescue facilities, educational facilities, and health system
22 facilities.

23 **P. Service Provider** means any person that is responsible for
24 the provision of public facilities to development in Palm Beach
25 County.

26 **SECTION IV.**
27 **RULES OF CONSTRUCTION.**

28 In the construction of this Ordinance, the rules set out in
29 Chapter I, Section 102 (Rules of Construction) of the Palm Beach
30 County Code of Laws and Ordinances shall be observed unless such
31 construction is inconsistent with the manifest intent of the Palm
32 Beach County Comprehensive Plan or this Ordinance.

33 **SECTION V.**
34 **PROCEDURE FOR REVIEW OF DEVELOPMENT AGREEMENT**

35 **A. Submission of application.** An application for a
36 Development Agreement shall be submitted to the Planning Director

1 in conjunction with or separate from any application for
2 development permit, on a form provided by the Planning Director and
3 made available to the public. The application shall be accompanied
4 by a fee established by the Board of County Commissioners from time
5 to time for the filing and processing of each application. The fee
6 shall be non-refundable.

7 **B. Determination of sufficiency.** Within fifteen (15)
8 working days of the submission of the application for a Development
9 Agreement, the Planning Director shall determine whether the
10 application is sufficient and includes the information necessary to
11 evaluate the application.

12 1. If it is determined that the application is not
13 sufficient, written notice shall be served on the
14 applicant specifying the deficiencies. The
15 Planning Director shall take no further action on
16 the application unless the deficiencies are
17 remedied.

18 2. If the application is determined sufficient, the
19 Planning Director shall notify the applicant in
20 writing, of the application's sufficiency, and that
21 the application is sufficient and ready for review
22 pursuant to the procedures and standards of this
23 section.

24 **C. County Department review and recommendation.** If an
25 application for development agreement is submitted simultaneously
26 with an application for a development permit or a Certificate of
27 Concurrence reservation, the application shall be processed in a
28 manner consistent with deadlines of the applicable development
29 permit process or the Palm Beach County Adequate Public Facilities
30 Ordinance.

31 If an application for a development agreement is filed
32 independently of a development permit or concurrence reservation
33 application, then the relevant County Departments shall have twenty
34 (20) working days from the date of the determination that an
35 application is sufficient to prepare and file a staff report and

1 recommendation regarding the development agreement with the
2 Planning Director.

3 D. Review and Report by Planning Director. Within ten (10)
4 working days after receiving County staff comments, or concurrently
5 with the preparation and completion of a staff report on an
6 application for development permit or concurrency reservation if
7 the proposed Development Agreement is being considered in
8 conjunction with an application for development permit, the
9 Planning Director shall review the application and the proposed
10 Development Agreement, and prepare a report and recommendation as
11 to whether the application and proposed Development Agreement
12 complies with the standards of Sec. VI. Upon its completion, the
13 report and recommendation shall be mailed to the applicant by the
14 Planning Director.

15 E. Decision by Board of County Commissioners.

16 1. Two (2) public hearings. After the Planning
17 Director has made a recommendation on the
18 application and proposed Development Agreement, the
19 application and proposed Development Agreement
20 shall be considered at two (2) public hearings.

21 a. The first public hearing be held before the
22 Local Planning Agency who shall review the
23 application, the proposed Development
24 Agreement, the recommendation of the Planning
25 Director, and public testimony, and recommend
26 its approval, approval with conditions, or
27 denial. The day, time and place at which the
28 second public hearing will be held shall be
29 announced at the first public hearing.

30 b. The second public hearing shall be before the
31 Board of County Commissioners. The second
32 public hearing shall be a minimum of seven (7)
33 calendar days after the first public hearing.

34 2. Notice.

35 a. General requirement. Notice of intent to

1 consider the application and proposed
2 Development Agreement shall be advertised by
3 the County publishing an advertisement
4 approximately seven (7) calendar days before
5 each public hearing on the application in a
6 newspaper of general circulation and
7 readership in Palm Beach County. Notice of
8 intent to consider the application and
9 proposed Development Agreement shall also be
10 mailed by the applicant at least fifteen (15)
11 calendar days prior to the first public
12 hearing on the application by certified mail,
13 return receipt requested, to all owners of
14 property, as reflected on the current year's
15 tax roll, lying within 300 feet of the
16 property directly affected by the application
17 and proposed Development Agreement. Such
18 mailed notice shall be coordinated with and
19 combined with a notice required for review of
20 a development permit application, if feasible.
21 The applicant shall provide proof of
22 advertisement and the return receipts from the
23 mailing to the Planning Director a minimum of
24 five (5) working days before the first public
25 hearing.

26 b. Form. The form of the notices of intention to
27 consider adoption of a Development Agreement
28 shall specify:

29 (1) Time and place. The time and place of
30 each hearing on the application;

31 (2) Location. The location of the land
32 subject to the proposed Development
33 Agreement;

34 (3) Uses and intensities. The development
35 uses proposed on the property, including

the proposed population densities and
proposed building intensities and height;

(4) Where copy can be obtained. Instructions
for obtaining further information
regarding the application and proposed
Development Agreement, including where a
copy of the proposed Development
Agreement can be obtained.

3. Decision. At the conclusion of the second public
hearing, and based upon consideration of the
application and the proposed Development Agreement,
the recommendations of the Planning Director and
the Local Planning Agency, and public testimony
received during the public hearing, the Board of
County Commissioners shall approve, approve with
conditions, or deny the proposed Development
Agreement based upon whether it complies with the
standards in Sec. VI.

SECTION VI.
STANDARDS OF A DEVELOPMENT AGREEMENT

A Development Agreement shall, at a minimum, include the
following provisions:

A. Legal description and owner. A legal description of the
land subject to the Development Agreement and the names of the
legal and equitable owners;

B. Duration. The duration of the Development Agreement,
which shall not exceed five (5) years. It may be extended by
mutual consent of the Board of County Commissioners of Palm Beach
County and the developer subject to a public hearing;

C. Uses, densities, intensities and height. The development
uses permitted on the land including population densities, building
intensities and height;

D. Future land use designation. The land use designation of
the property under the Future Land Use Element of the Comprehensive
Plan;

E. Zoning district designation. The current zoning district

1 designation of the land subject to the Development Agreement;

2 F. Conceptual site plan. A conceptual site plan indicating
3 phases if the development is subject to phasing;

4 G. Public facility adequacy. A description of public
5 facilities that will service the development, including who shall
6 provide such facilities, the date any new public facilities, if
7 needed, will be constructed, and a schedule to assure public
8 facilities are available concurrent with the impact of the
9 development. Any public facilities to be designed and/or
10 constructed by the developer shall be in compliance with all
11 applicable Federal, State, and County standards to ensure the
12 quality of the public facilities. The standards shall include, but
13 not be limited to, guarantees of performance and quality, and
14 project controls (including scheduling, quality controls, and
15 quality assurances);

16 H. Reservation or dedication of land. A description of any
17 reservations or dedications of land for public purposes;

18 I. Local development permits. A description of all local
19 development permits approved or needed to be approved for
20 development of the land;

21 J. Local development permits obtained by applicant/property
22 owner. A provision that all local development permits identified
23 in Sec. VI. shall be obtained at the sole cost of the
24 applicant/property owner and, that in the event that any such local
25 development permits are not received, no further development of the
26 property shall be allowed until such time as the Board of County
27 Commissioners has reviewed the matter and determined whether or not
28 to terminate the Development Agreement, or to modify it in a manner
29 consistent with the public interest and the Comprehensive Plan;

30 K. Consistency with Comprehensive Plan. A finding that the
31 development permitted or proposed in the Development Agreement is
32 consistent with the Comprehensive Plan;

33 L. Consistency with land development regulations. A finding
34 that the development permitted or proposed in the Development
35 Agreement is consistent with the County's land development

1 regulations;

2 M. Compliance with laws not identified in Development
3 Agreement. A statement indicating that failure of the Development
4 Agreement to address a particular permit, condition, term or
5 restriction shall not relieve the applicant of the necessity of
6 complying with the law governing said permitting requirements,
7 conditions, terms or restrictions, and that any matter or thing
8 required to be done under existing ordinances of Palm Beach County
9 shall not be otherwise amended, modified or waived unless such
10 modification, amendment or waiver is expressly provided for in the
11 Development Agreement with specific reference to the provisions so
12 waived, modified or amended;

13 N. Breach. The terms and conditions that govern a breach of
14 the Development Agreement; and

15 O. Conditions necessary to ensure compliance with Code and
16 Plan. Such conditions, terms, restrictions or other requirements
17 determined to be necessary by the Board of County Commissioners to
18 ensure compliance with the County's land development regulations
19 and consistency with the Comprehensive Plan.

20 SECTION VII.
21 EXECUTION OF DEVELOPMENT AGREEMENT.

22 A Development Agreement shall be executed by all persons
23 having legal or equitable title in the land subject to the
24 Development Agreement, including the fee simple owner and any
25 mortgagees.

26 SECTION VIII.
27 RECORDATION.

28 Within fourteen (14) calendar days after the County enters
29 into a Development Agreement pursuant to Sec. VIII., the Clerk to
30 the Board of County Commissioners shall record the executed
31 Development Agreement in the public records of Palm Beach County.
32 A copy of the recorded and executed Development Agreement shall be
33 submitted to the Department of Community Affairs (DCA) within
34 fourteen (14) calendar days after the Development Agreement is
35 recorded. If the Development Agreement is amended, canceled,
36 modified, extended, or revoked, the Clerk shall have notice of such

1 action recorded in the public records and such recorded notice
2 shall be submitted to DCA.

3 **SECTION IX.**
4 **LEGISLATIVE ACT.**

5 A Development Agreement is determined to be a legislative act
6 of Palm Beach County in the furtherance of its powers to plan and
7 regulate development, and as such, shall be superior to the rights
8 of existing mortgagees, lien holders or other persons with a legal
9 or equitable interest in the land subject to the Development
10 Agreement, and the obligations and responsibilities arising
11 thereunder on the property owner shall be superior to the rights of
12 said mortgagees or lien holders and shall not be subject to
13 foreclosure under the terms of mortgages or liens entered into or
14 recorded prior to the execution and recordation of the Development
15 Agreement.

16 **SECTION X.**
17 **EFFECT OF EXISTING LAWS ON LANDS**
18 **SUBJECT TO DEVELOPMENT AGREEMENT**

19 **A. Local Laws at Time of Approval Govern.** Upon the approval
20 of a Development Agreement, the laws, codes, and policies of Palm
21 Beach County in effect at the time of execution of the Development
22 Agreement shall govern the development of the land, subject to the
23 terms of the Development Agreement, and for the duration of the
24 Development Agreement.

25 **B. Exceptions to Local Law Requirements.** Palm Beach County
26 may apply subsequently adopted laws to the lands that are subject
27 to a Development Agreement only if the Board of County
28 Commissioners holds one public hearing noticed pursuant to the
29 requirements of Sec. V.E.2. and determines any one of the
30 following:

31 **1. Not in Conflict with Laws Governing Development**
32 **Agreement.** The subsequently adopted laws are not in conflict with
33 the laws governing the Development Agreement, and do not prevent
34 development of the land uses, intensities, or densities in the
35 Development Agreement;

36 **2. Essential to Public Health, Welfare and Safety.** The
37 subsequently adopted laws are essential to the public health,

1 safety, or welfare, and expressly state that they shall apply to a
2 development that is subject to a Development Agreement;

3 3. Anticipated and Provided for in Development
4 Agreement. The subsequently adopted laws are specifically
5 anticipated and provided for in the Development Agreement;

6 4. Substantial changes in Conditions. Palm Beach
7 County demonstrates that substantial changes have occurred in
8 pertinent conditions existing at the time of approval of the
9 Development Agreement; or

10 5. Substantially Inaccurate Information. The
11 Development Agreement is based on substantially inaccurate
12 information supplied by the developer.

13 C. Subsequent Adoption of State and Federal Laws. If state
14 or federal laws are enacted after the execution of a Development
15 Agreement which are applicable to and preclude the parties'
16 compliance with the terms of a Development Agreement, such
17 agreement shall be modified or revoked as is necessary to comply
18 with the relevant state or federal laws.

19 SECTION XI.
20 EFFECT OF CONTRARY STATE OR FEDERAL LAWS.

21 In the event that state and federal laws are enacted after the
22 execution of a Development Agreement which are applicable to and
23 preclude the parties compliance with the terms of the Development
24 Agreement, such Development Agreement shall be modified or revoked
25 as is necessary to comply with the relevant state or federal laws.
26 Such modification or revocation shall occur only after notice and
27 public hearing pursuant to Sec. V.E.

28 SECTION XII.
29 AMENDMENT OR CANCELLATION OF DEVELOPMENT AGREEMENT
30 BY MUTUAL CONSENT.

31 A Development Agreement may be amended or canceled by mutual
32 consent of the parties (the Board of County Commissioners and the
33 developer and municipality) subject to the Development Agreement,
34 or by their successors in interest. Prior to amending a
35 Development Agreement, two (2) public hearings shall be held on the
36 proposed amendment, consistent with the requirements of Sec. V.E.

1 B. Any party or any aggrieved or adversely affected person
2 may file an action for injunctive relief in Circuit Court for Palm
3 Beach County to enforce terms of a Development Agreement.

4 **SECTION XV.**
5 **SEVERABILITY**

6 If any section, phrase, sentence or portion of this Ordinance
7 is for any reason held invalid or unconstitutional by any court of
8 competent jurisdiction, such portion shall be deemed a separate,
9 distinct, and independent provision, and such holding shall not
10 affect the validity of the remaining portions thereof.

11 **SECTION XVI.**
12 **REPEAL OF LAWS IN CONFLICT**

13 All local laws and Ordinances applying to Palm Beach County in
14 conflict with any provisions of this Ordinance are hereby repealed.

15 **SECTION XVII.**
16 **INCLUSION IN CODE**

17 The provisions of this Ordinance shall become and be made a
18 part of the Code of Laws and Ordinances of Palm Beach County,
19 Florida, and the various sections may be retitled, renumbered, or
20 relocated to accomplish this purpose.

21 **SECTION XVIII.**
22 **EFFECTIVE DATE**

23 This Ordinance shall become effective upon receipt of official
24 acknowledgement of the Ordinance from the Secretary of State that
25 said Ordinance has been filed.

26 **PASSED AND DULY ADOPTED** this 5th day of March, 1991.

27 **BOARD OF COUNTY COMMISSIONERS**
28 **PALM BEACH COUNTY, FLORIDA**

29 By: [Signature]

30 **Chair**

31 **APPROVED AS TO FORM AND**
32 **LEGAL SUFFICIENCY**

33 By: [Signature]

34 **County Attorney**

35 **JOHN B. DUNKLE, CLERK**
36 **Board of County Commissioners**

37 By: [Signature]

38 **DEPUTY CLERK**

39 Acknowledgement by the Department of State of the State of
40 Florida, on this, the 15th day of March, 1991.

41 Acknowledgement from the Department of State received on the
19th day of March, 1991, at 11:01 a.m. and filed in
the Office of the Clerk of the Board of County Commissioners of
Palm Beach County, Florida.
(DEV-AGR.ORD)

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, JOHN B. DUNKLE, Clerk of the
Board of County Commissioners certify this to
be a true and correct copy of the original filed in
my office on 3/15/91

DATED at West Palm Beach, FL on 3/20/91

JOHN B. DUNKLE, Clerk

By: [Signature]

D.C

ORDINANCE NO. 91-46